

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

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Date:

September 20, 2002

State = [REDACTED]

Plan = [REDACTED]

Dear [REDACTED],

This responds to your letter of August 1, 2002 to Robert Patchell of the Office of Associate Chief Counsel (Tax Exempt and Government Entities), Internal Revenue Service. You inquired about the rules governing plan-to-plan transfers between eligible deferred compensation plans under § 457(e)(10) of the Internal Revenue Code (the "Code") and the regulations thereunder. You report that a number of firefighters who are currently participants in the State's eligible deferred compensation Plan have contacted your office to request a plan-to-plan transfer of the amounts in their accounts in the State's Plan to the § 457 plan offered by the State's firefighter association.

You asked whether these participants could make an "in-service" plan-to-plan transfer of the amounts in their State Plan accounts, and whether § 457(e)(10) requires the State to permit and make these requested transfers. Since you have not submitted either the State's Plan or the association's plan, or a request for a private ruling filed in accordance with Revenue Procedure 2002-1, 2002-1 I.R.B. 1, we are unable to provide a definitive ruling or opinion concerning this issue. However, we can provide you this general information letter¹ concerning the available provisions of section 457 and the proposed regulations thereunder, regarding plan-to-plan transfers, which we hope will be helpful to your office.

¹ Section 2.04 of Revenue Procedure 2002-1 defines an "information letter" as a statement issued by the Internal Revenue Service that calls attention to a well-established interpretation or principle of tax law without applying it to a specific set of facts. This section also provides that an information letter is advisory only and has no binding effect on the Service.

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Section 457(e)(10) of the Code provides that a participant is not required to include in gross income any portion of the entire amount payable to such participant solely because of the transfer of such portion from one eligible deferred compensation plan to another eligible deferred compensation plan. Proposed § 1.457-10(b) of the Income Tax Regulations, published in the Federal Register for May 8, 2002 (67 FR 30826, 30843), provides additional guidance regarding plan-to-plan transfers.

Proposed § 1.457-10(b)(1) states that an eligible governmental plan *may* provide for the transfer of amounts deferred by a participant or beneficiary to another eligible governmental plan provided certain requirements in its paragraph (b)(2) are met. Among these requirements are that 1) the transferor plan provides for transfers, 2) the receiving plan provides for the receipt of transfers, and 3) the participant whose amounts deferred are being transferred has had a severance from employment with the transferring employer and is performing services for the entity maintaining the receiving plan. An exception to the severance from employment requirement occurs if 1) *all* of the assets held by the eligible government plan are transferred, 2) the transfer is made to another eligible governmental plan maintained by an eligible governmental employer within the same state, and 3) the participants whose deferred amounts are being transferred are not eligible for additional annual deferrals in the receiving plan unless they are performing services for the entity maintaining the receiving plan.

From these provisions, eligible § 457 plans are not required to include or permit plan-to-plan transfers under § 457(e)(10). In addition, participants who are still performing services for a governmental entity which is sponsoring the State's Plan are not permitted to make a plan-to-plan transfer except as part of a transfer where that government entity is making a plan-to-plan transfer of the entire accounts of all its employees to the plan of another eligible governmental employer within the same state. However, it should be noted that these proposed regulations may be revised when the Internal Revenue Service publishes final regulations after reviewing the comments submitted concerning the proposed § 457 regulations.

We hope the general information supplied in this letter is helpful. If you need further assistance regarding either the substantive issues or the procedure for requesting a ruling, please contact me or [REDACTED] at (202) 622-6060.

Sincerely,
Cheryl Press
Senior Legal Counsel
Office of the Associate Chief Counsel
(Tax Exempt and Government Entities)